



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

COPY

BY FAX AND US MAIL

September 21, 2000

Russell V. Randle
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037

RE: Carrier Air Conditioning Superfund Site, Collierville; CERCLA 122(h) Agreement

Dear Mr. Randle:

Congratulations on a successful settlement on behalf of your client. Carrier Corporation should be very happy with your performance. EPA is pleased that we were able to reach resolution to the satisfaction of each side so as to continue the good relationship that we have had with Carrier throughout the years and that we are confident will continue into the future.

Enclosed is a CERCLA 122(h) agreement to resolve the issue of past and future costs at the Site. It has been made as short as possible without omitting any key provisions. It incorporates many of the suggestions made by you in your letter of March 17, 2000 regarding the original agreement sent to Carrier. Please review and let me know if you have any questions. If it is agreeable, please execute and return to me. I need to have the signed version back from you as soon as possible in order to complete the routing here before the end of the fiscal year.

As I stated in our meeting earlier this week, this settlement is subject to approval by the Department of Justice and by EPA management.

Thank you for your cooperation. I do appreciate it.

Sincerely,

David K. Clay
Senior Attorney

enclosure



10626231

IN THE MATTER OF:

CARRIER AIR CONDITIONING
SUPERFUND SITE, COLLIERVILLE,
TENNESSEE

CARRIER CORPORATION
RESPONDENT

) AGREEMENT FOR RECOVERY
) OF PAST AND FUTURE RESPONSE
) COSTS
)
) U.S. EPA Region 4
) CERCLA Docket No. _____
)
)
) PROCEEDING UNDER SECTION
) 122(h)(1) OF CERCLA
) 42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D and redelegated to the Director, Waste Management Division.

2. This Agreement is made and entered into by EPA and Carrier Corporation (Respondent). Respondent consents to and will not contest EPA's jurisdiction to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. On September 29, 1989, EPA and Respondent entered into an Administrative Order on Consent ("AOC") for Remedial Investigation/Feasibility Study ("RI/FS") at the Carrier Air Conditioning Superfund Site (the "Site").

4. Respondent financed and conducted the RI/FS to EPA's satisfaction.

5. On February 11, 1993, EPA issued a Unilateral Administrative Order (UAO) for the Remedial Design and Remedial Action (RD/RA) of the Site to the Carrier Corporation.

6. Respondent has financed and conducted the RD/RA work, completed construction of the treatment system, and is now conducting Operation and Maintenance (O&M) of the treatment systems. The construction of the treatment systems was completed to EPA's satisfaction, and to date they have been operated in a satisfactory manner.

7. EPA contends that there are Past Costs outstanding at the Site.

8. In performing further response actions at the Site, including oversight of ongoing O&M of the treatment systems, EPA contends that it will incur Future Response Costs at or in connection with the Site.

9. EPA and Respondent desire to resolve Respondent's alleged civil liability for Past and Future Response Costs, as such terms are hereinafter defined, without litigation and without admission or adjudication of any issue of fact or law.

10. EPA alleges that Respondent is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs as defined in Section 107(a) of CERCLA 42 U.S.C. § 9607(a), incurred at or in connection with the Site.

III. PARTIES BOUND

11. This Agreement shall be binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate or other legal status of Respondent including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondent's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into the terms and conditions of this Agreement and to bind legally the party represented by him or her.

IV. DEFINITIONS

12. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

b. "Agreement" shall mean this Agreement. In the event of conflict between this Agreement and any appendix, the Agreement shall control.

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the current rate specified for interest on

investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

f. "Paragraph" shall mean a portion of this Agreement identified by an arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and the Respondent.

h. Past Response Costs shall mean all costs EPA contends to be outstanding from Respondent for the period extending from October 1, 1980 through and including September 30, 1999.

i. "Future Response Costs" shall mean all costs as defined under Section 107(a) of CERCLA, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports, work and other items pursuant to the UAO, SOW and this Agreement, or otherwise implementing, overseeing, or enforcing the UAO, SOW and this Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, and laboratory costs. Future Response Costs shall begin on October 1, 1999.

j. "Section" shall mean a portion of this Agreement identified by a roman numeral.

k. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. REIMBURSEMENT OF PAST RESPONSE COSTS

13. Respondent shall reimburse the EPA Hazardous Substance Superfund \$321,000 in satisfaction for all Past Response Costs (defined as all response costs through September 30, 1999, and including any interest that may have been due on those past response costs). Respondent will, within 30 calendar days of the effective date of this Order, remit a check for the amount of \$321,000 made payable to the "Hazardous Substance Superfund." Interest shall begin to accrue from the due date through the date of payment if not timely received. The check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

14. At the time of payment, Settling Party shall send notice that such payment has been

made to:

Ms. Paula V. Batchelor
U.S. EPA, Region 4
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303-3104

VI. REIMBURSEMENT OF FUTURE RESPONSE COSTS

15. Respondent shall reimburse the EPA Hazardous Substance Superfund for all future response costs as defined in this agreement consistent with Section 107(a) of CERCLA. During each fiscal year, EPA will submit to Respondent an accounting of all response and oversight costs incurred by the U.S. Government with respect to the Site. The Respondent will, within 30 calendar days of receipt of that accounting, remit a check for the amount of those costs made payable to the "Hazardous Substance Superfund." Interest shall begin to accrue from the due date through the date of payment if not timely received. Each check shall reference the name and address of the party making payment, the Site name, the EPA Region and Site/Spill ID Number, and the EPA docket number for this action, and shall be sent to:

U.S. Environmental Protection Agency
Region 4
Superfund Accounting
P.O. Box 100142
Atlanta, Georgia 30384

16. At the time of payment, Respondent shall send notice that such payment has been made to:

Ms. Paula V. Batchelor
U.S. EPA, Region 4
Waste Management Division
Program Services Branch
61 Forsyth St., S.W.
Atlanta, Georgia 30303-3104

Failure to submit an accounting in one fiscal year does not prevent EPA from submitting an accounting for that year in a subsequent fiscal year.

17. Respondent may contest payment of Future Response Costs if Respondent determines that EPA has made an accounting error or has included costs outside the scope of this Agreement. If Respondent believes it has a valid basis pursuant to this Agreement to

contest payment of Future Response Costs then the Respondent shall notify EPA in writing of its objections within 14 calendar days after receipt of the bill. Respondent's written objections shall identify the disputed costs and the basis for the objection. The objections will be subject to the dispute resolution process set forth in Section VII (Dispute Resolution).

18. In the event of an objection, the Respondent shall, within the 30 day period, pay all uncontested Future Response Costs to the EPA in the manner described in Paragraphs 15 and 16. ~~Simultaneously, the Respondent shall establish an interest-bearing escrow account in a federally insured bank and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Respondent shall send to the EPA, as provided in Section XIII (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Respondent shall initiate the Dispute Resolution procedures in Paragraph 20. If the EPA prevails in the dispute, within 5 days of the resolution of the dispute, the Respondent shall pay the sums due (with accrued interest) to the EPA in the manner described in Paragraphs 15 and 16. If the Respondent prevails concerning any aspect of the contested costs, the Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the EPA in the manner described in Paragraph 15. Respondent shall be disbursed any balance of the escrow account.~~

19. EPA reserves the right to bring an action against the Respondent pursuant to Section 107 of CERCLA to enforce this Agreement.

VI. DISPUTE RESOLUTION

20. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Agreement. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Respondent that have not been disputed in accordance with this Section.

21. Any dispute which arises pursuant to Paragraph 17 of this Agreement shall, in the first instance, be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when EPA receives Respondent's written objections as set forth in Paragraphs 17.

22. In the event that the Parties cannot resolve the dispute by informal negotiations under the preceding Paragraph, the EPA Waste Management Division Director shall provide a written statement of the decision and the reasons supporting that decision to Respondent. The Division Director's determination is EPA's final decision. If Respondent does not agree to abide

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by the determination of EPA's Division Director, EPA reserves the right to seek appropriate relief.

23. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Respondent under this Agreement, not directly in dispute, unless EPA agrees otherwise.

VII. COVENANT NOT TO SUE BY EPA

24. Except as specifically provided in Paragraph 25 (Reservations of Rights by EPA), EPA covenants not to sue Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover response costs. This covenant shall take effect upon receipt by EPA of all amounts required by Sections V and VI (Reimbursement of Past and Future Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

25. The covenant not to sue by EPA set forth in Paragraph 24 does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including but not limited to:

- a. liability for failure of Respondent to meet a requirement of this Agreement;
- b. liability for injunctive relief or administrative order enforcement under Section 106 and 107(c)(3) of CERCLA, 42 U.S.C. §§ 9606 and 9607(c)(3); and
- c. criminal liability.

26. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY RESPONDENT

27. Respondent agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site, including but not limited to any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to response costs incurred by Respondent.

28. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

29. Nothing in this Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Agreement. EPA and Respondent each reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

30. EPA and Respondent agree that the actions undertaken by Respondent in accordance with this Agreement do not constitute an admission of any liability by Respondent. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in Section II of this Agreement.

31. The Parties agree that Respondent is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Agreement. The "matters addressed" in this Agreement are Past and Future Response Costs.

32. Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement, it will notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Agreement, it will notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Agreement.

33. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Paragraph 24.

XI. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute

complete satisfaction of any written notice requirement of this Agreement with respect to EPA and Settling Parties.

As to EPA:

David K. Clay
Senior Attorney
U.S. Environmental Protection Agency
Environmental Accountability Division
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

As to Respondent:

~~Nelson Wong~~ *Brian Yerich*
Manager of Environmental Programs
Carrier Corporation
Carrier Parkway, TR-18
Syracuse, New York 13221

United Technologies Corporation
MS-503
1 Financial Plaza
Hartford, CN 06101

XII. INTEGRATION

35. This Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIII. PUBLIC COMMENT

36. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

XIV. EFFECTIVE DATE

37. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 36 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

U.S. Environmental Protection Agency

By: _____

Richard Green

Director

Waste Management Division

Region 4

[Date]

THE UNDERSIGNED Respondent enters into this Agreement in the matter of Recovery of
Past and Future Response Costs, relating to the Carrier Air Conditioning Superfund Site,
Collierville, Tennessee:

FOR Respondent:

Carrier Corporation

[Address]

By: _____

[Name]

[Date]